

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:Case No. 19-C- 3

Plaintiff(s)

Judge: Sweeney

Scott A. Windom

101 E. Main St

Harrisville, WV 26362

vs.

Defendant(s)

Jason S. Harshbarger

Name

2551 Oxford Rd

Street Address

Pullman, WV 26421

City, State, Zip Code

Days to
Answer

20

Type of Service

Personal Service

2019 JAN 24 P 1:42

FILED

ROSELEN COX
CLERK OF CIRCUIT COURT
RITCHIE COUNTY, WV**II. TYPE OF CASE:** General Civil Adoption Mass Litigation [As defined in T.C.R. 26.04(a)] Administrative Agency Appeal Asbestos Civil Appeal from Magistrate Court FELA Asbestos Miscellaneous Civil Petition Other: _____ Mental Hygiene Habeas Corpus/Other Extraordinary Writ Guardianship Other: _____ Medical Malpractice**III. JURY DEMAND:** Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year): / /

**IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?**

 Yes No**IF YES, PLEASE SPECIFY:** Wheelchair accessible hearing room and other facilities Reader or other auxiliary aid for the visually impaired Interpreter or other auxiliary aid for the deaf and hard of hearing Spokesperson or other auxiliary aid for the speech impaired Foreign language interpreter-specify language: _____ Other: _____

Attorney Name: Scott A. Windom

Firm: Windom Law Offices, PLLC

Address: 101 E Main St, Harrisville, WV 26362

Telephone: 304-643-4440

Representing:

<input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
<input type="checkbox"/> Cross-Defendant	<input type="checkbox"/> Cross-Complainant
<input type="checkbox"/> 3rd-Party Plaintiff	<input type="checkbox"/> 3rd-Party Defendant

 Proceeding Without an AttorneyOriginal and 3 copies of complaint enclosed/attached.Dated: 1 / 24 / 2019Signature: 

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

SCOTT A. WINDOM,

Plaintiff,

v.

CASE NO. 19-C-3

The Honorable Timothy L. Sweeney

JASON S. HARSHBARGER,

Defendant.

COMPLAINT

Comes now the Plaintiff, SCOTT A. WINDOM, by and through counsel, Windom Law Offices, PLLC, and for his Complaint herein, does now hereby state as follows:

PARTIES

- 1) Plaintiff, Scott A. Windom (“Windom”), is a resident of Ritchie County, West Virginia, with a mailing address of 5548 State Park Road, Cairo, West Virginia.
- 2) Defendant, Jason Harshbarger (“Harshbarger”), is a resident of Ritchie County, West Virginia, with a mailing address of 2551 Oxford Road, Pullman, West Virginia, and the current Delegate for the 7th District which includes Ritchie and Pleasants counties.

JURISDICTION & VENUE

- 3) This action is brought pursuant to the provisions of the “Uniform Declaratory Judgments Act,” W. Va. Code §55-13-1, *et seq.*, and Rule 57 of the West Virginia Rules of Civil Procedure, seeking a declaratory judgment confirming Plaintiff’s rights under the First Amendment to the United States Constitution to participate in Facebook discussions on the Defendant’s Facebook page for “Delegate Jason Harshbarger” and that the Defendant’s actions to block the Plaintiff have deprived the Plaintiff of his rights. Plaintiff respectfully asks that the Court declare that the

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CIRCUIT COURT
RITCHIE COUNTY, W.V.

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viewpoint-based exclusion of the Plaintiff violates the First Amendment, and order the Defendant to restore Plaintiff's access to comment on the Facebook page.

- 4) This action is also brought pursuant to the "Equitable Remedies" provisions of W. Va. Code §53-5-1, *et seq.*, seeking injunctive relief to coercively protect Plaintiff's Constitutional rights from Defendant's improper interference and attempts to inhibit, impede and deny Plaintiff's rightful use of a public forum.
- 5) Substantive law of the State of West Virginia governs this civil action due to the domicile of the parties which is in Ritchie County, West Virginia.
- 6) The Circuit Court of Ritchie County, West Virginia, has general and personal jurisdiction over the parties to this civil action.
- 7) Venue is proper in the Circuit Court of Ritchie County, West Virginia, inasmuch as the events and actions giving rise to this cause of action are specifically linked and related to the actions of the parties in Ritchie County, West Virginia.

FACTUAL ALLEGATIONS

- 8) Harshbarger is an elected member of the West Virginia House of Delegates representing approximately 18,000 individuals from the 7th District which included Ritchie County and Pleasants County, West Virginia.
- 9) Harshbarger has a social media account on Facebook. His Facebook page known as "Delegate Jason S. Harshbarger".



10) Facebook is a platform that allows its users to publish messages and articles, to republish or respond to others' messages, and to interact with other Facebook users in relation to those messages. Speech posted on Facebook deals with a multitude of topics and interests, but particularly relevant here is that a significant amount of speech posted on Harshbarger's Facebook page is by, to or about the government.

11) A Facebook account holder is an individual who has created an account on the platform. A user can post messages to their own account or reply to messages on pages that they "like" or "follow". These posts can include photographs, videos and links to websites. The Facebook page for "Delegate Jason S. Harshbarger" has more than 1,000 followers and 859 people have liked the page.

12) A Facebook user's webpage displays all posts generated by the user with the most recent posts appearing at the top of the page. This display is known as a user's "timeline." When a user generates a post, the timeline updates immediately to include that post. Anyone who can view a user's public Facebook page can see the user's timeline. Below is a screenshot of part of the timeline associated with the Facebook page for "Delegate Jason S. Harshbarger" or @jason.s.harshbarger:

The screenshot shows a Facebook timeline for the page "Delegate Jason S. Harshbarger" (@jason.s.harshbarger). The page header includes a profile picture of Jason S. Harshbarger, a "Share" button, a "Save" button, a "Suggest Edits" button, and a "Community" section with 859 likes and 1,008 followers. The "About" section lists the phone number (304) 859-2203 and occupation as a Politician. The "Community" section shows 125 other friends who like the page. The timeline displays several posts:

- Delegate Jason S. Harshbarger (March 6)**
ALL STATE PUBLIC EMPLOYEES will receive a 5% pay raise next year. Teachers, school service personnel, and state troopers will receive a 5% pay raise beginning on July 1, 2018.
*All other public employees will receive a 5% pay raise effective on July 1, 2018, though those raises will be provided in the Budget Bill. [See More](#)
14 Comments 33 Shares
- Debbie Sparks** Thank you!
35m
- Josh Compton** Thank you for the update.
35m
- Diane Lamp** How will this affect IDO Waiver?
35m
↳ [View previous replies](#)
Delegate Jason S. Harshbarger IDO waivers shouldn't be touched. We realize this is an important program. I will keep my ears open as we discuss the details of the budget.
35m
↳ [View more replies](#)
- Robert Koch** Now we want school choice. Many of our teachers deserved the raise but many are occupying space and causing our children to be nearly last compared with the rest of the country. To me the strike was all about the money and not one thing to do with education. I heard talk about how the teachers were going to brainwash their students as to why they weren't in school! Won't work in our home!
34m
↳ [View previous replies](#)
- Patsy Barley** Robert Koch ...by paying teachers a living wage, we are insuring that the best of the best stay in-state to teach our children. Do ho-hum "teachers" sometimes slide through the cracks? Sadly, yes...this happens in the best of work places & seems to be unavoidable. I am proud of our teachers!
34m
↳ [View more replies](#)

On the right side of the timeline, there are sections for "Community", "About", "Related Pages", and language options (English (US), Español, Português (Brazil), Français (France), Deutsch). The bottom of the page includes links for Privacy, Terms, Advertising, Ad Choices, Cookies, and More, along with the copyright notice Facebook © 2016.

13) A Facebook user must have an account name associated with their Facebook webpage. When the Facebook user creates a post, there is a “button” that allows other Facebook users to post comments and reply to comments.

14) The Facebook page also has a “button” to allow Facebook users to message the person who has the page. Those messages are sent privately and are seen through a mobile application or in a separate window on the Facebook page.

15) Harshbarger’s page and timeline are visible to everyone with internet access who has a Facebook account. However, Harshbarger can block some users from commenting or messaging his page, even though they can view the page and the timeline.

16) When a user comments or replies, the comment or reply can include photographs, videos, GIFs or text. Other users can then reply to that comment or reply, thereby allowing the users to have a dialogue and create a comment thread.

17) When users reply and comment on a post, those who are commenting on the same post are notified by Facebook that a comment or reply has been made to the post, thus encouraging further dialogue and bringing users back to the post for “views”.

18) A user whose account is public but who wants to limit the comments from certain other users, can block comments from a particular user. Although Facebook makes the blocking feature available to all users, it is the user that decides whether to make use of the feature and against whom the feature will be used. A blocked user is thus prevented from commenting or replying to comments in the first user’s Facebook account.

19) Harshbarger established his account in our about 2016 and has used the account to engage with his followers and the public about legislation, public policy, his campaign and endorsements, among other topics. He uses the account as an instrument of his office, and during the legislative session, he uses it almost exclusively as a channel for communicating with the public about the ongoing legislative session. Because of the way that he uses his Facebook account, Harshbarger’s posts have become an important source of news and information about State government, and the

comment threads associated with the posts have become important forums for speech by, to and about the Legislature.

20) Harshbarger presents the account to the public as one that he operates in his official capacity rather than his personal page. The page is identified as "Delegate Jason S. Harshbarger." The about link on the page appears as follows:

Delegate Jason S. Harshbarger
@jason.s.harshbarger

Home About Endorsements Photos Videos Posts Community Info and Ads

About

CAREER AND PERSONAL INFO

Political Info

Current Office: House of Delegates, West Virginia, District 7, Republican

Currently Running for: House of Delegates, West Virginia, District 7, Republican

INTERESTS

Favorite Quotations

"I don't know what your destiny will be, but one thing I do know: the only ones among you who will be really happy are those who have sought and found how to serve." Albert Schweitzer, 1952 Nobel Peace Prize Winner

Interests

Hunting, camping, fishing, hiking

CONTACT INFO

Call (304) 659-2203

jharshbarger@aol.com

MORE INFO

Hometown

Parkersburg, WV

Affiliation

Republican

About

Delegate Jason S. Harshbarger represents Pleasants and Ratche counties in the WV House of Delegates, District 7.

Political views

Conservative

Religious Views

Christian

Activities

Past Corporate Board President of West Virginia Hugh O'Brian Youth Leadership (HOBY), currently serving on the corporate board. Lions Club volunteer. Youth Exchange Program Host Family (Italy and Finland). Softball coach for Pink Panthers. Pig Tail Softball League in Ratche County.

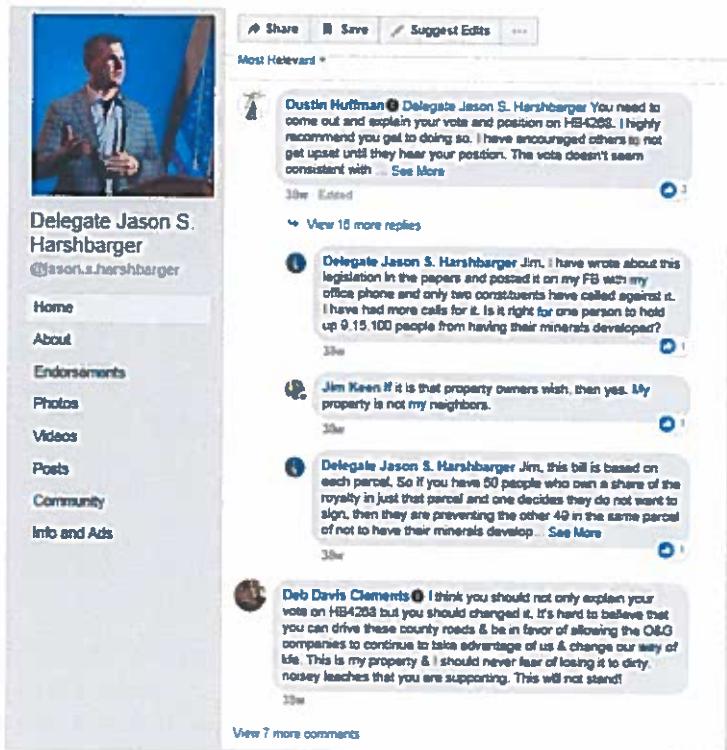
Gender

Male

Politician

21) Harshbarger's Facebook account is accessible to the public at large without regard to political affiliation or any other limiting criteria. Harshbarger allows anyone to follow his account that chooses to do so. The account has over 1,000 followers and other members of the Facebook community can comment on the posts on Harshbarger's page. The only users who cannot comment, reply or message on Harshbarger's page are those users that Harshbarger chooses to block.

22) Windom was blocked by Harshbarger during the 2018 legislative session, apparently after a discussion to a post about the "co-tenancy" bill that Harshbarger supported. Harshbarger's blocking of Windom's comments, replies or messages prevents or impedes Windom from replying to dialogue and discussion between Harshbarger and his constituents. In fact, in the comments below, Harshbarger referenced overwhelming support for a bill he voted for. He had blocked at least opponent of that bill from commenting on the Facebook page, thus limiting the dialogue between Harshbarger and his constituents.



23) The blocking of Windom violates Windom's First Amendment rights by distorting the expressive forum in which Harshbarger and other non-blocked users participate and engage in discussions with their delegate.

COUNT I: Violation of the First Amendment of the United States Constitution and Article III, § 7 of the Constitution of West Virginia

24) The Plaintiff incorporates by reference all previous paragraphs to this Complaint as if fully restated herein.

25) Defendant's blocking of the Plaintiff from commenting, replying or messaging the Facebook page of Delegate Jason S. Harshbarger violates the First Amendment of the United States Constitution and Article III, § 7 of the West Virginia Constitution because it imposes a viewpoint-based restriction on the Plaintiff's participation on a public forum of an elected official.

26) Defendant's blocking of the Plaintiff from commenting, replying or messaging the Facebook page of Delegate Jason S. Harshbarger violates the First Amendment of the United States Constitution and Article III, § 7 of the West Virginia Constitution because it imposes a viewpoint-based restriction on the Plaintiff's ability to petition the government through his delegate for the redress of grievances.

27) Defendant's blocking of the Plaintiff from commenting, replying or messaging Delegate Jason S. Harshbarger's Facebook page violates the First Amendment of the United States Constitution and Article III, § 7 of the West Virginia Constitution because it imposes a viewpoint-based restriction on the Plaintiff's right to free speech.

COUNT II: Declaratory Relief

- 28) The Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
- 29) There exists a justiciable controversy between the parties regarding the Defendant's violation of the Plaintiff's rights.
- 30) Plaintiff respectfully requests, pursuant to *W. Va. Code §55-13-1, et seq.*, the Court invoke its jurisdiction and declare that Defendant has no legal right to block the Plaintiff, or others similarly situated, from commenting on the Facebook page of Delegate Harshbarger; that Defendant's viewpoint-based blocking of the Plaintiff from the Facebook page of Delegate Jason S. Harshbarger to be unconstitutional; and, for an award of attorney fees to Plaintiff in such amounts at the Court determines are just and reasonable.

COUNT III: Preliminary and Permanent Injunctive Relief

- 31) The Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
- 32) The Defendant has intentionally, recklessly, willfully, improperly and repeatedly violated the Plaintiff's rights to free speech.
- 33) The Plaintiff is entitled to a preliminary injunction to enjoin the Defendant from blocking Plaintiff's access to comment on the Delegate Jason S. Harshbarger Facebook page during the pendency of this litigation and a permanent injunction to enjoin the Defendant from the same in the future.

PRAYER FOR RELIEF

WHEREFORE, Windom respectfully prays that the Court:

- 1) Declare Defendant's viewpoint-based blocking of the Plaintiff from the Facebook page of Delegate Jason S. Harshbarger to be unconstitutional;

- 2) Issue a temporary and permanent injunction against Harshbarger to unblock the Plaintiff from the Facebook page of Delegate Jason S. Harshbarger, and prohibiting Harshbarger from blocking Windom or others from the account on the basis of viewpoint;
- 3) Award Windom his costs, including reasonable attorney's fees; and,
- 4) For such other and further relief, both general and special, which as to this Court may seem just and proper.

SCOTT A. WINDOM
Plaintiff,
By Counsel,



RODNEY C. WINDOM, ESQ.

(W. Va. State Bar No. 4091)

SCOTT A. WINDOM, ESQUIRE

(W. Va. State Bar No. 7812)

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COUNSEL FOR THE PLAINTIFF